

USG Interiors – Walworth, WI

Issue:

Determine whether EPA should object to the proposed Title V renewal permit for USG Interiors. EPA does not agree with WDNR's interpretation of its SIP rule NR 417 regarding how SO₂ emissions are counted. We believe that, as WDNR interpreted the rule during the SIP approval process, the SIP complies with the Clean Air Act, but that WDNR's interpretation as expressed in a memo from its attorney, and a related footnote containing this interpretation in the draft USG Title V permit, is contrary to the plain language of the SIP.

Background:

- EPA enforcement believes that on March 23, 1992, USG under-calculated its SO₂ emissions in a permit modification request it submitted to WDNR.
- On February 11, 2014, EPA (APS and Enforcement) had a call with the WDNR permit writer to discuss our questions on how the SO₂ emissions from the mineral wool cupola were quantified and modelled in the current (original) Title V permit from 2008.
- On February 26, 2014, EPA (APS and ORC) had a conference call with WDNR to ask WDNR how it interprets NR 417.07(2)(b). Specifically EPA asked whether WDNR interprets “may not emit from any stack more than 5.5 pounds of sulfur dioxide per million Btu heat input” to include SO₂ emissions from any raw material used, or to only include SO₂ emissions from the fuel used, when determining whether the 5.5 pounds of SO₂ per million Btu heat input is being met. EPA also sent WDNR an email asking for its interpretation on March 3, 2014.
- On March 14, 2014, WDNR Bureau of Legal Services provided its interpretation in a memo, which is essentially that: “Considering the purpose of the rule and the background documents, it is clear that Wisconsin only intended the fuel burning emissions, and not any process related emissions, to be subject to the 5.5 lb SO₂/mmBTU emission limit. This is reflected throughout the background discussion of the rule and also in the fact that there is one set of limits for emissions from the fuel and a different set of limits for process related emissions in the current chapter NR 417, Wis. Adm. Code.”
- On March 21, 2014, WDNR public noticed the draft Title V renewal permit for USG.
- On April 21, 2014, EPA provided a comment letter to WDNR on the draft Title V renewal permit. These comments included: “The note in the Limitations column on page 10 of the draft permit, “Note: The heat input rating of the cupola is 33.21 MMBtu/hr...” should also be removed. This note is not an applicable permit limitation or condition and there is no legal origin and authority for this note. Furthermore, because compliance with the federally approved version of NR 417.07 is assessed by measuring the entire stack emissions of sulfur dioxide, without discarding any non-fuel based portions of the emissions, the substance of the footnote is inconsistent with the applicable requirement in the state implementation plan.”

- On __ 2014, WDNR proposed the permit to EPA for our 45 day review. WDNR is maintaining its interpretation of NR 417, and is not removing the footnote in the Title V permit. While we view the footnote as an interpretation of the SIP, WDNR disagrees and believes that the footnote is simply "explanatory" in nature, and is not substantive.
- EPA has 45 days, or until __ 2014 to issue an objection to the Title V permit.

Options:

Option 1:

Notify WDNR that if it does not remove footnote EPA will object to the permit. Set a deadline for WDNR to respond so that EPA can still object prior to the end of the 45 day review period if necessary.

Option 1(a):

Object to the permit based on the footnote with the rationale that the footnote is an interpretation of the SIP and not an applicable requirement and thus should not be included in the permit. (That is that the footnote is creating additional Title V permit requirements/conditions that are not from the SIP rule cited.)

Option 1(b):

Object based on Option 1(a) with the additional rationale that EPA does not agree with the substance of the footnote, that is, WDNR's interpretation of its SIP.

Option 2:

Do not object to the Title V permit, but rather send a letter in response to WDNR's Bureau of Legal Services March 14, 2014, memo which provided WDNR's interpretation of its SIP rule NR 417. EPA's reading of the SIP is that the rule regulates the quantity of SO₂ that is emitted by the equipment out the stack, irrespective of which material contains the sulfur that causes those emissions. WDNR has not required the use of any test methods that would identify how much SO₂ is coming from different materials in order to provide for a limit that only addresses a subset of the emitted SO₂. EPA's reading is that a limit of 5.5 lb/MMBTU means that a source that emits more than 5.5 lb/MMBTU is in noncompliance, irrespective of how much of that resulted from fuel burning. Thus, the plain language of the rule does not reflect the interpretation WDNR is giving, and WDNR can apply that interpretation only if they submit a SIP revision establishing their interpretation, supplemented by a suitable 110(l) demonstration to show that the relaxation would not interfere with attainment and maintenance of the NAAQS, including the 2010 SO₂ NAAQS.

Option 3:

Object to the permit under Option 1(a) or (b) and send the letter discussed in Option 2.